



Video: Are you Building a Home? Here are the key things you should know about building contracts.

A recent increase in builders experiencing financial difficulty has left some home owners stranded and others nervous about the process of building. If you are building a home it is vital to read and understand your building contract before you sign on the dotted line.

Felix Hoelscher, Commercial Lawyer and Partner at Andersons Solicitors explains the key things to do and look out for in your contract when building a home in this video.

[Watch YouTube video here.](#)

TRANSCRIPT:

Why have building complaints been in the media so much?

My view is that the building complaints we are seeing in the media really still arise, even now, out of the COVID era.

A lot of people when entering into building contracts did so either pre COVID or just after, and those contracts typically are for a fixed price.

So what's happened is that over time, through COVID and with supply chain issues globally, the prices of building have gone up but builders contracts are still locked into the original fixed price.

So what we're seeing is that builders are effectively trying to play catch up with the contracts and trying to meet the costs of completion from an earlier contract using money obtained from a later contract and if there's not enough margin in it for the builder, they're really running into problems. We're seeing that in particular where builders are taking on, in effect, more work than they can possibly do in the hope that a deposit from the later work will cover some of the short fall of the expenses of their earlier work, and when that's not happening, we're seeing these big collapses that are making the media at the moment.

What are common contractual problems?

One of the common reasons why we see contractual problems arising in building disputes is because building contracts by their nature are complicated things. There is always a tension between the builder needing to lock in a price that is high enough for them to cover their overheads versus the consumer, the home owner, who wants to have price certainty or a lower price.

There are two ways of dealing with that; one is having a fixed price which is high, the other is having a variable price with rise and fall clauses where the builder can actually increase the cost of the price depending on the cost of supply of goods and labour, and very often, complex terms like that are not really understood by the home owner, they don't understand necessarily what price impact will be caused by variations, by prime cost items, by delay provisions, force majeure and other legal concepts that are in these complex contracts, the home owner just won't understand.

Equally, sometimes, due to the cost of construction and other economic pressures the builders themselves don't necessarily comply with the contracts and so we see circumstances where the builders are charging a much higher deposit than they would otherwise be entitled to charge or where they're cutting corners and for example not taking out building indemnity insurance which itself has a cost.

What can I do to protect myself?

A way that you can protect yourself to a certain extent on building contract issues is to follow a series of steps and concepts which secure your position as best possible.

The first step in my view is that you get some proper advice on what the contract actually says. If there are terms in it that you don't understand, get the advice before you sign and understand how the contract might actually operate in the practical sense so when you're building, how will it look? What does the contract do in certain circumstances, so that's the first step.

The other step is to ask around. There are lots of people building; ask those people 'what are your experiences with your builder?', hop online, look on the forums, there are construction forums, see what people are saying about a builder, are they in the news for example?

It's really important to make sure the building indemnity insurance certificates are in place, that you have actually sighted them and that they've been lodged with the insurer and that all the licensing is in order. You can do licensing searches to make sure that the work that the builder is doing, they're actually licensed to do.

The other thing which is really important once the contract is in place, is that you make sure that if the contract is payable by a series of installment steps, progress claims if you like, that those works that you are now being asked to pay have been done properly.

Having an independent building expert come in and do an inspection at every step before you make the payment is very good security and never paying above and beyond for the next step in advance, so you should never pay for work that hasn't yet been performed.

What is the law?

The law has protections in place for consumers, in particular all domestic building work in South Australia is governed by the building work contractors act.

What that legislation does is that it sets out the requirements for licensing and insurance and other things but very importantly at section 32 it sets out certain statutory warranties which are implied into every domestic building works contract.

Those warranties include things such as that work will be done to acceptable trade standards, within a timely manner, using proper materials and be fit for their intended purpose.

If there's a breach of the section 32 warranties, then the home owner can apply to the magistrates court under section 37 for orders that any defective work is corrected by the builder, that in some cases compensation be paid or alternatively that the terms of the contract are varied to reflect a balance between the owner and the builder.

How can Andersons' help?

If you're looking at signing a building contract or in fact you're in dispute with your builder, our view is that getting legal assistance early is better than leaving it too late.

If you'd like any assistance with any matters to do with building whether that be a review of your contract before you sign or correspondence with your builder in the event that you have already entered into a dispute, here at Andersons we can assist, please [contact us](#) here.